

Amendments to House Bill No. 486  
3rd Reading Copy

Requested by Senator John Esp

For the Senate Local Government Committee

Prepared by Leanne Heisel  
March 27, 2009 (1:42pm)

SENATE LOCAL GOVERNMENT  
EXHIBIT NO. 3  
DATE 3.27.09  
BILL NO. HB 486

1. Title, line 4.

**Strike:** "ANNEXATION AND SUBDIVISION"

**Insert:** "LAND USE"

**Following:** "LAWS;"

**Insert:** "CLARIFYING SUBDIVISION REVIEW FOR CONDOMINIUMS;  
INCLUDING SAND AND GRAVEL RESOURCES AMONG THE ITEMS THAT  
MUST BE MAPPED IN A GROWTH POLICY;"

2. Title, line 7.

**Following:** "CONDITION;"

**Insert:** "PROVIDING PENALTIES FOR VIOLATION OF CERTAIN ZONING  
REGULATIONS; REQUIRING A COUNTY TO ATTEMPT TO OBTAIN  
COMPLIANCE WITH ZONING REGULATIONS BEFORE FILING A  
COMPLAINT; REVISING PUBLIC NOTICE REQUIREMENTS FOR ZONING  
AND REQUIRING PUBLIC NOTICE FOR INTERIM ZONING;"

3. Title, line 10.

**Following:** "SECURITY;"

**Insert:** "PROVIDING THAT A PARK DEDICATION MAY NOT BE REQUIRED FOR  
A FIRST MINOR SUBDIVISION FROM A TRACT OF RECORD;"

4. Title, line 11.

**Following:** "70-23-301,"

**Insert:** "76-1-601,"

**Following:** "76-2-107,"

**Insert:** "76-2-113,"

**Following:** "76-2-205,"

**Insert:** "76-2-206, 76-2-210,"

5. Title, line 12.

**Following:** "76-3-507,"

**Insert:** "76-3-510,"

**Following:** "76-3-620,"

**Insert:** "76-3-621,"

6. Page 3.

**Following:** line 1

**Insert:** "Section 2. Section 76-1-601, MCA, is amended to read:  
"76-1-601. Growth policy -- contents. (1) A growth policy

may cover all or part of the jurisdictional area.

(2) The extent to which a growth policy addresses the elements listed in subsection (3) is at the full discretion of the governing body.

(3) A growth policy must include:

(a) community goals and objectives;

(b) maps and text describing an inventory of the existing characteristics and features of the jurisdictional area, including:

(i) land uses;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) public facilities;

(vii) natural resources; and

(viii) sand and gravel resources; and

~~(viii)~~(ix) other characteristics and features proposed by the planning board and adopted by the governing bodies;

(c) projected trends for the life of the growth policy for each of the following elements:

(i) land use;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) natural resources; and

(vii) other elements proposed by the planning board and adopted by the governing bodies;

(d) a description of policies, regulations, and other measures to be implemented in order to achieve the goals and objectives established pursuant to subsection (3)(a);

(e) a strategy for development, maintenance, and replacement of public infrastructure, including drinking water systems, wastewater treatment facilities, sewer systems, solid waste facilities, fire protection facilities, roads, and bridges;

(f) an implementation strategy that includes:

(i) a timetable for implementing the growth policy;

(ii) a list of conditions that will lead to a revision of the growth policy; and

(iii) a timetable for reviewing the growth policy at least once every 5 years and revising the policy if necessary;

(g) a statement of how the governing bodies will coordinate and cooperate with other jurisdictions that explains:

(i) if a governing body is a city or town, how the governing body will coordinate and cooperate with the county in which the city or town is located on matters related to the growth policy;

(ii) if a governing body is a county, how the governing body will coordinate and cooperate with cities and towns located

within the county's boundaries on matters related to the growth policy;

- (h) a statement explaining how the governing bodies will:
  - (i) define the criteria in 76-3-608(3)(a); and
  - (ii) evaluate and make decisions regarding proposed subdivisions with respect to the criteria in 76-3-608(3)(a);

- (i) a statement explaining how public hearings regarding proposed subdivisions will be conducted; and

- (j) an evaluation of the potential for fire and wildland fire in the jurisdictional area, including whether or not there is a need to:

- (i) delineate the wildland-urban interface; and

- (ii) adopt regulations requiring:

- (A) defensible space around structures;

- (B) adequate ingress and egress to and from structures and developments to facilitate fire suppression activities; and

- (C) adequate water supply for fire protection.

- (4) A growth policy may:

- (a) include one or more neighborhood plans. A neighborhood plan must be consistent with the growth policy.

- (b) establish minimum criteria defining the jurisdictional area for a neighborhood plan;

- (c) establish an infrastructure plan that, at a minimum, includes:

- (i) projections, in maps and text, of the jurisdiction's growth in population and number of residential, commercial, and industrial units over the next 20 years;

- (ii) for a city, a determination regarding if and how much of the city's growth is likely to take place outside of the city's existing jurisdictional area over the next 20 years and a plan of how the city will coordinate infrastructure planning with the county or counties where growth is likely to take place;

- (iii) for a county, a plan of how the county will coordinate infrastructure planning with each of the cities that project growth outside of city boundaries and into the county's jurisdictional area over the next 20 years;

- (iv) for cities, a land use map showing where projected growth will be guided and at what densities within city boundaries;

- (v) for cities and counties, a land use map that designates infrastructure planning areas adjacent to cities showing where projected growth will be guided and at what densities;

- (vi) using maps and text, a description of existing and future public facilities necessary to efficiently serve projected development and densities within infrastructure planning areas, including, whenever feasible, extending interconnected municipal street networks, sidewalks, trail systems, public transit facilities, and other municipal public facilities throughout the infrastructure planning area. For the purposes of this subsection (4)(c)(vi), public facilities include but are not limited to

drinking water treatment and distribution facilities, sewer systems, wastewater treatment facilities, solid waste disposal facilities, parks and open space, schools, public access areas, roads, highways, bridges, and facilities for fire protection, law enforcement, and emergency services;

(vii) a description of proposed land use management techniques and incentives that will be adopted to promote development within cities and in an infrastructure planning area, including land use management techniques and incentives that address issues of housing affordability;

(viii) a description of how and where projected development inside municipal boundaries for cities and inside designated joint infrastructure planning areas for cities and counties could adversely impact:

(A) threatened or endangered wildlife and critical wildlife habitat and corridors;

(B) water available to agricultural water users and facilities;

(C) the ability of public facilities, including schools, to safely and efficiently service current residents and future growth;

(D) a local government's ability to provide adequate local services, including but not limited to emergency, fire, and police protection;

(E) the safety of people and property due to threats to public health and safety, including but not limited to wildfire, flooding, erosion, water pollution, hazardous wildlife interactions, and traffic hazards;

(F) natural resources, including but not limited to forest lands, mineral resources, sand and gravel resources, streams, rivers, lakes, wetlands, and ground water; and

(G) agricultural lands and agricultural production; and

(ix) a description of measures, including land use management techniques and incentives, that will be adopted to avoid, significantly reduce, or mitigate the adverse impacts identified under subsection (4)(c)(viii).

(5) The planning board may propose and the governing bodies may adopt additional elements of a growth policy in order to fulfill the purpose of this chapter."

{ Internal References to 76-1-601:

X76-1-410

X76-1-605

X76-3-210

X76-3-509

X76-3-616

X76-3-616 }"

**Renumber:** subsequent sections

7. Page 4.

**Following:** line 18

**Insert:** "NEW SECTION. **Section 6. Violations and penalties.** A violation of this part or of a resolution adopted pursuant to this part is a misdemeanor and is punishable by a fine of up to \$500 or by imprisonment in the county jail for a term not

exceeding 6 months, or both. The violation is an absolute liability offense as provided for in 45-2-104."

**Insert:** "Section 7. Section 76-2-113, MCA, is amended to read:

"76-2-113. **Enforcement of zoning provisions.** (1) If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or if any building, structure, or land is used in violation of this part or of any resolution adopted under this part, the county, in addition to other remedies, may take any appropriate action or begin proceedings to:

(1)(a) prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;

(2)(b) restrain, correct, or abate a violation;

(3)(c) prevent the occupancy of a building, structure, or land; or

(4)(d) prevent any illegal act, conduct, business, or use in or near the premises.

(2) The county shall attempt to obtain voluntary compliance at least 30 days before filing a complaint for a violation of this part that is subject to the penalties under [section 6]."  
{Internal References to 76-2-113: None.}"

**Renumber:** subsequent sections

8. Page 6, lines 21 and 22.

**Strike:** "must" on line 21 through "notice" on line 22

**Following:** "must" on line 22

**Insert:** ": (a) "

9. Page 6, line 23.

**Strike:** "(a) "

**Insert:** "(i) "

10. Page 6, line 24.

**Strike:** "(b) "

**Insert:** "(ii) "

11. Page 6, line 25.

**Strike:** "(c) "

**Insert:** "(iii) "

12. Page 6, line 26.

**Strike:** "(d) "

**Insert:** "(iv) "

13. Page 6, line 27.

**Following:** "recorder"

**Insert:** ";

(b) be posted not less than 45 days before the public

hearing in at least five public places within the proposed district; and

(c) be published once a week for 2 weeks in a newspaper of general circulation within the county"

14. Page 7.

Following: line 20

Insert: "Section 11. Section 76-2-206, MCA, is amended to read:

"76-2-206. Interim zoning map or regulation. (1) The Subject to subsection (3), the board of county commissioners may adopt establish an interim zoning map district or interim regulation as an emergency measure in order to promote the public health, safety, morals, and general welfare if:

(a) the purpose of the interim zoning map district or interim regulation is to classify and regulate those uses and related matters that constitute the emergency; and

(b) the county:

(i) is conducting or in good faith intends to conduct studies within a reasonable time; or

(ii) has held or is holding a hearing for the purpose of considering any of the following:

(A) a growth policy;

(B) zoning regulations; or

(C) a revision to a growth policy, to a master plan, as provided for in 76-1-604(6) and 76-2-201(2), or to zoning regulations pursuant to this part.

(2) An interim A resolution for an interim zoning district or interim regulation must be limited to 1 year from the date it becomes effective. The Subject to subsection (3)(c), the board of county commissioners may extend the interim resolution for 1 year, but not more than one extension may be made.

(3) The board of county commissioners shall observe the following procedures in the establishment of an interim zoning district or interim regulation:

(a) Notice of a public hearing on the proposed interim zoning district boundaries or of the interim regulation must be published once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:

(i) the boundaries of the proposed district;

(ii) the specific emergency or exigent circumstance compelling the establishment of the proposed interim zoning district or interim regulation;

(iii) the general character of the proposed interim zoning district or interim regulation;

(iv) the time and place of the public hearing; and

(v) that the proposed interim zoning district or interim regulation is on file for public inspection at the office of the county clerk and recorder.

(b) At the public hearing, the board of county commissioners

shall give the public an opportunity to be heard regarding the proposed establishment of an interim zoning district or interim regulation.

(c) After the hearing, the board of county commissioners may adopt a resolution to establish an interim zoning district or interim regulation."

{ Internal References to 76-2-206:

X7-21-1003      X75-15-103      X76-2-209 }"

**Insert: "Section 12.** Section 76-2-210, MCA, is amended to read:

**"76-2-210. Enforcement of zoning provisions.** (1) ~~In case if~~ any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of this part or of any resolution ~~made under authority conferred hereby, the proper authorities of adopted under this part,~~ the county, in addition to other remedies, may institute any appropriate action or proceedings to:

(a) prevent ~~such the~~ unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; to

(b) restrain, correct, or abate ~~such a~~ violation; to

(c) prevent the occupancy of ~~such the~~ building, structure, or land; or to

(d) prevent any illegal act, conduct, business, or use in or about ~~such near~~ the premises.

(2) The county shall attempt to obtain voluntary compliance at least 30 days before filing a complaint for a violation of this part that is subject to the penalties under 76-2-211.

~~(2)(3)~~ (3) The board of county commissioners may appoint enforcing officers to supervise and enforce the provisions of the zoning resolutions."

{ Internal References to 76-2-210: None. }

**Renumber:** subsequent sections

15. Page 14.

**Following:** line 18

**Insert: "Section 18.** Section 76-3-510, MCA, is amended to read:

**"76-3-510. Payment for extension of capital facilities.** (1) A local government may require a subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public roads, sewer lines, water supply lines, and storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly attributable to the subdivision. A local government may not require a subdivider to pay or guarantee payment for part or all of the costs of constructing or extending capital facilities related to education.

(2) All fees, costs, or other money paid by a subdivider under this section must be expended on the capital facilities for

which the payments were required."  
{ Internal References to 76-3-510: None. }"  
**Renumber:** subsequent sections

16. Page 18.

**Following:** line 18

**Insert:** "Section 23. Section 76-3-621, MCA, is amended to read:

"76-3-621. **Park dedication requirement.** (1) Except as provided in 76-3-509 or subsections (2), (3), and (6) through (9) of this section, a subdivider shall dedicate to the governing body a cash or land donation equal to:

(a) 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;

(b) 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than 1 acre;

(c) 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger than 3 acres; and

(d) 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.

(2) When a subdivision is located totally within an area for which density requirements have been adopted pursuant to a growth policy under chapter 1 or pursuant to zoning regulations under chapter 2, the governing body may establish park dedication requirements based on the community need for parks and the development densities identified in the growth policy or regulations. Park dedication requirements established under this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03 acres per dwelling unit.

(3) A park dedication may not be required for:

(a) land proposed for subdivision into parcels larger than 5 acres;

(b) subdivision into parcels that are all nonresidential;

(c) a subdivision in which parcels are not created, except when that subdivision provides permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums; or

(d) a subdivision in which only one additional parcel is created; or

(e) a first minor subdivision from a tract of record as described in 76-3-609(2).

(4) The governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered

by the land donation.

(5) (a) In accordance with the provisions of subsections (5)(b) and (5)(c), the governing body shall use the dedicated money or land for development, acquisition, or maintenance of parks to serve the subdivision.

(b) The governing body may use the dedicated money to acquire, develop, or maintain, within its jurisdiction, parks or recreational areas or for the purchase of public open space or conservation easements only if:

(i) the park, recreational area, open space, or conservation easement is within a reasonably close proximity to the proposed subdivision; and

(ii) the governing body has formally adopted a park plan that establishes the needs and procedures for use of the money.

(c) The governing body may not use more than 50% of the dedicated money for park maintenance.

(6) The local governing body shall waive the park dedication requirement if:

(a) (i) the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and

(ii) the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection (1);

(b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and

(ii) the area of the land proposed to be subdivided, by virtue of providing long-term protection provided for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1);

(c) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1); or

(d) (i) the subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and

(ii) the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under subsection (1).

(7) The local governing body may waive the park dedication requirement if:

(a) the subdivider provides land outside the subdivision that affords long-term protection of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and

(b) the area of the land to be subject to long-term protection, as provided in subsection (7)(a), equals or exceeds the area of the dedication required under subsection (1).

(8) A local governing body may, at its discretion, require a park dedication for a subsequent minor subdivision as described in 76-3-609(3). A local governing body that chooses to require a park dedication shall specify in regulations the circumstances under which a park dedication will be required.

(9) Subject to the approval of the local governing body and acceptance by the school district trustees, a subdivider may dedicate a land donation provided in subsection (1) to a school district, adequate to be used for school facilities or buildings.

(10) For the purposes of this section:

(a) "cash donation" is the fair market value of the unsubdivided, unimproved land; and

(b) "dwelling unit" means a residential structure in which a person or persons reside.

(11) A land donation under this section may be inside or outside of the subdivision."

{Internal References to 76-3-621:

x7-16-2324

x7-16-2324

x76-3-203

x76-3-509 }"

**Renumber:** subsequent sections

17. Page 19.

**Following:** line 13

**Insert:** "NEW SECTION. Section 25. {standard} Codification instruction. [Section 6] is intended to be codified as an integral part of Title 76, chapter 2, part 1, and the provisions of Title 76, chapter 2, part 1, apply to [section 6]."

**Renumber:** subsequent sections

- END -